

Virginia Freedom of Information Act and other Applicable Statutes and Regulations

The Virginia Freedom of Information Act (FOIA), located § 2.2-3700 et. seq. of the Code of Virginia, ensures citizens of the Commonwealth and representatives of the media access to public records held by public bodies, public officials, and public employees.

A public record is any writing or recording -- regardless of whether it is a paper record, an electronic file, an audio or video recording, or any other format -- that is prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business. All public records are presumed to be open, and may only be withheld if a specific, statutory exemption applies.

The policy of FOIA states that the purpose of FOIA is to promote an increased awareness by all persons of governmental activities. In furthering this policy, FOIA requires that the law be interpreted liberally, in favor of access, and that any exemption allowing public records to be withheld must be interpreted narrowly. However, there are other federal statutes (such as the Health Insurance Portability and Assurance Act (HIPAA)) and federal regulations (such as Title 42 of the Code of Federal Regulations, Part 431) that prohibit DMAS from releasing certain protected health information to individuals other than the persons the information is about. Individuals must provide written permission from the person the information is about to the agency in order for DMAS to release the requested information. Please refer to the following [Public Records Routinely Withheld](#) section.

To request information and records from the Department of Medical Assistance Services, direct your request to the FOIA Coordinator at 600 East Broad Street, Suite 1300, Richmond, VA 23219. To request copies of Medicaid records, we prefer your request be in writing to ensure the accuracy of your inquiry, and either emailed to FOIA@dmass.virginia.gov or faxed to 804-371-4981. You may phone 804-371-6391 for general information.

In addition, if you have questions about Virginia's FOIA statute, you may contact the FOIA Advisory Council at foiadcouncil@leg.state.va.us or by phone at 804-225-3056 or toll free at 1-866-448-4100. Please do not direct your Medicaid-specific questions or problems to the FOIA Council.

Your FOIA Rights:

- You have the right to request to inspect or receive copies of public records, or both
- You have the right to request that any charges for the requested records be estimated in advance.
- If you believe that your FOIA rights have been violated, you may file a petition in district or circuit court to compel compliance with FOIA.

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Making a Request for Records from Department of Medical Assistance Services:

- You may request records by U.S. Mail, fax, e-mail, in person, or over the phone. FOIA does not require that your request be in writing, nor do you need to specifically state that you are requesting records under FOIA.

- From a practical perspective, it may be helpful to both you and the person receiving your request to put your request in writing. This allows you to create a record of your request. It also gives a clear statement of what records you are requesting so that there is no misunderstanding over a verbal request.
- Your request must identify the records you are seeking with "reasonable specificity." This is a common-sense standard. It does not refer to or limit the volume or number of records that you are requesting; instead, it requires that you be specific enough so that we can identify and locate the records that you are seeking.
- Your request must ask for existing records or documents. FOIA gives you a right to inspect or copy records; it does not apply to a situation where you are asking general questions about the work of [the Department], nor does it require [the Department] to create a record that does not exist nor change the format of an existing record to conform to your request.
- You may choose to receive electronic records in any format used by Department of Medical Assistance Services in the regular course of business.
- For example, if you are requesting records maintained in an Excel database, you may elect to receive those records electronically, via e-mail or on a computer disk, or to receive a printed copy of those records
- If we have questions about your request, please cooperate with staff's efforts to clarify the type of records that you are seeking, or to attempt to reach a reasonable agreement about a response to a large request. Making a FOIA request is not an adversarial process, but we may need to discuss your request with you to ensure that we understand what records you are seeking. To the extent permitted by federal statute and regulation, we wish to locate and provide the information you seek in the most effective and efficient manner possible. At the same time, we do not wish to provide the wrong information or records.

The Department of Medical Assistance Services' Responsibilities in Responding to Your Request:

- The Department of Medical Assistance Services must respond to requests from citizens of the Commonwealth within five working days of receipt. "Day One" is considered the day after your request is received. The five-day period does not include weekends or holidays.
- No justification is needed to request information or records under FOIA. FOIA allows the Department of Medical Assistance Services to ask you to provide your name and legal address.
- FOIA requires that the Department of Medical Assistance Services make one of the following responses to requests from citizens of the Commonwealth within the five-day time period:
 1. Provide you with the records that you have requested in their entirety.
 2. Withhold all of the records that you have requested, because all of the records are subject to a specific statutory exemption. If all of the records are being withheld, we must send you a response in writing. That writing must identify the volume and subject matter of the records being withheld, and state the specific section of the Code of Virginia that allows us to withhold the records.
 3. Provide some of the records that you have requested, but withhold other records. We cannot withhold an entire record if only a portion of it is subject to an exemption. In that instance, we may redact the portion of the record that may be withheld, and must provide you with the remainder of the record. We must provide you with a written response stating the specific section of the Code of Virginia that allows portions of the requested records to be withheld.

4. If it is practically impossible for the Department of Medical Assistance Services to respond to your request within the five-day period, we must state this in writing, explaining the conditions that make the response impossible. This will allow us seven additional working days to respond to your request, giving us a total of 12 working days to respond to your request.
5. If you make a request for a very large number of records, and we feel that we cannot provide the records to you within 12 days without disrupting our other organizational responsibilities, we may petition the court for additional time to respond to your request. However, FOIA requires that we make a reasonable effort to reach an agreement with you concerning the production of the records before we go to court to ask for more time.

Costs:

- Medicaid recipients are not charged for copies of their own records. Other requesting individuals will be asked to pay for the records that you request from the Department of Medical Assistance Services. FOIA allows us to charge for the actual costs of responding to FOIA requests. This would only include items like staff time spent searching for the requested records, copying costs, or any other costs directly related to supplying the requested records.
- If we estimate that it will cost more than \$200 to respond to your request, we will tell you in writing and ask you to agree to pay the actual charges. Effective 7/1/08, we will require you to pay a deposit, not to exceed the amount of the estimate, before proceeding with your request. The five days that we have to respond to Commonwealth citizens' requests does not include the time between when we ask for a deposit and when you respond.
- If you owe us money from a previous FOIA request that has remained unpaid for more than 30 days, the Department of Medical Assistance Services may require payment of the past-due bill before it will respond to your new FOIA request.

Public Records Routinely Withheld

The Department is specifically required by federal Medicaid regulations, 42 CFR § 431.300 et.seq., to withhold: identifying names and addresses; medical services provided; social and economic conditions or circumstances; agency evaluation of personal information; medical data, including diagnosis and past history of disease or disability; any information received for verifying income eligibility and the amount of medical assistance payments, and; any information received in connection with the identification of legally liable third party resources. The Department is also required by HIPAA to protect from disclosure all Protected Health Information.

Commonly used exemptions:

The Code of Virginia allows any public body to withhold certain records from public disclosure. [The Department] commonly withholds records subject to the following exemptions:

- Personnel records (§ 2.2-3705.1 (1) of the Code of Virginia)
- Records subject to attorney-client privilege (§ 2.2-3705.1 (2)) or attorney work product (§ 2.2-3705.1 (3))
- Vendor proprietary information (§ 2.2-3705.1 (6))
- Records relating to the negotiation and award of a contract, prior to a contract being awarded (§ 2.2-3705.1 (12))